



Supplementary Decision on Standing and Funding (No. 3)

1. This decision addresses two applications for standing involving three individuals: Chad Eros, Benjamin Dichter and Chris Garrah. Below, I explain why I would dismiss the applications.

Background to the Applications

2. Each of the applications before me is somewhat unusual. I will first give some background about them in order to provide a context for the rest of these reasons.

3. On August 19, 2022, the Commission received an application for standing and funding filed by Benjamin J. Dichter. Mr. Dichter was at one point a director of the Freedom 2022 Human Rights and Freedom Not for Profit Corporation (“the Convoy Corporation”). The Convoy Corporation, along with some of its directors and other persons (“the Convoy Group”), were jointly granted standing in my *Decision on Standing* dated June 27, 2022. Mr. Dichter was not one of the individuals listed in that application.

4. Chad Eros, like Mr. Dichter, was at one point a director the Convoy Corporation, but was not included in the Convoy Group’s standing application. On August 29, 2022, in the course of an email exchange between Mr. Eros and Commission Counsel, Mr. Eros forwarded a copy of an application for standing, dated June 15, 2022. Commission counsel had not previously seen an application from Mr. Eros. An extensive search through the Commission’s records and email system did not locate a copy of this application.

5. Also on August 29th, the Commission received a revised application for standing from counsel for Mr. Dichter. This revised application sought standing for Mr. Dichter



along with Chris Garrah. Like Mr. Dichter and Mr. Eros, Mr. Garrah was at one point a director of the Convoy Corporation. However, unlike Mr. Eros and Mr. Dichter, Mr. Garrah was included in the joint application for standing filed by the Convoy Group. He therefore already has standing before the Commission.

Chad Eros

6. Mr. Eros describes himself as a CPA in good standing, who was asked to help with financial and accounting matters related to the fundraising associated with the Convoy Corporation. He states that he was the individual who incorporated the Convoy Corporation and was the person responsible for administering the main crowdfunding campaign on GiveSendGo. Mr. Eros notes the role he has played in a number of legal proceedings related to the Ottawa protests. He states that he would assist the Commission to know the truth about the financing of the Freedom Convoy.

7. Mr. Eros seeks full standing on all aspects of the Commission's mandate. He does not seek funding.

8. In assessing Mr. Eros's application, I first must decide what to do about the date on which it was filed. The date on Mr. Eros's standing application is June 15, 2022, which was the deadline to file an application for standing. On the other hand, this application does not appear to have been received until August 29, 2022. While I conclude that the Commission does not appear to have received the application in June, I am not in any position to assess whether it was sent on time or why it did not come to the Commission's attention until August 29th.

9. Ultimately, I believe the prudent approach is to assess Mr. Eros's application as if it was received by the Commission on time. This avoids the possibility of prejudicing Mr.



Eros in the event that he did attempt to send it in, and was simply unaware that it did not reach the Commission or that it was in fact received by the Commission but for some unexplained reason has not been found.

10. I would dismiss Mr. Eros's application.

11. In reaching this decision, I rely on the same general considerations that I outlined in my prior decisions on standing.

12. The application filed by Mr. Eros clearly discloses that he was involved in the Convoy Corporation and has relevant information about its financing and fundraising. The Commission would benefit from obtaining the information that he has.

13. However, participation in and knowledge of the events under examination in the Inquiry do not give rise to a sufficient interest to ground standing. Important knowledge about matters within the Commission's mandate may make a person a relevant witness, but it does not in and of itself justify a grant of standing.

14. I am also not satisfied that Mr. Eros would make a necessary contribution to the inquiry as a party with standing. A person with key information can make an important contribution by testifying as a witness. To be a party, more is needed. For example, Mr. Eros has indicated in his application that he wishes to have the right to cross-examine witnesses. However, there is nothing in his application that explains why his doing so constitutes a necessary contribution to the inquiry.

15. I do not say any of this to minimize Mr. Eros's importance in the underlying events at issue in this Inquiry. There are many important ways to contribute to a public inquiry. Being a Party is one. Being a witness is another.



Benjamin Dichter

16. Mr. Dichter describes himself as a truck driver, podcast producer, former political candidate for the House of Commons, and one of the first individuals involved in the events leading up to the invocation of the *Emergencies Act*. He states that he has first-hand knowledge and experience that is not shared by any other individual, entity or group who have been granted standing so far in the Inquiry.

17. Mr. Dichter states that he was in Ottawa prior to the start of the protests and was interacting – in some cases on a daily basis – with organizers of the Freedom Convoy.

Mr. Dichter notes the following in his application:

- a. He has been described as a “spokesperson”, “vice-president” and “key-figure” in the Freedom Convoy by major media outlets;
- b. He was one of the first seven directors of the Freedom 2022 Human Rights and Freedoms not for profit Corporation;
- c. He was personally involved in fundraising campaigns on GoFunMe and GiveSendGo, as well as efforts to raise funds through cryptocurrencies to support the Freedom Convoy;
- d. He was named as a defendant in the *Li v. Barber et al.* class action lawsuit and participated in the injunction proceedings in the Ontario Superior Court of Justice;
- e. He managed social media accounts related to the Freedom Convoy, hosted news conferences, and acted as a spokesperson on several media outlets.



18. In Mr. Dichter's August 19th application for standing, he indicated that he was not prepared to share a grant of standing with other Parties. His application materials describe what could be described as a parting of ways with other protest organizers. He describes events such as being removed as a director of the Freedom 2022 Human Rights and Freedoms Corporation, and the termination of his legal retainer with the Justice Centre for Constitutional Freedoms by that organization, which continues to represent certain other protest organizers. He expresses concerns regarding these steps and the conduct of some Parties that he believes may be in breach of confidentiality and solicitor-client privilege.

19. However, in his revised August 29, 2022 application, Mr. Dichter indicated that he was now prepared to share a grant of standing with Mr. Garrah.

20. Mr. Dichter recognizes that his application for standing and funding is late. He provides a number of reasons for this delay:

- a. He did not understand the difference between possibly being called as a witness at the Inquiry and being a party with full standing;
- b. He was not aware "until a few days" before filing his application that applications for standing and funding were open to the public, or that a person with his experience could apply for standing;
- c. He was not aware that there was a deadline to apply for standing and funding, and had not seen the Commission's *Notice to Interested Parties Regarding the Public Order Emergency Commission*;
- d. He only recently learned that his name was not included in the list of Convoy members who were jointly granted standing by the Commission.



21. Mr. Dichter seeks full standing with respect to all aspects of the Commission's mandate. His application form also indicates that he is seeking to participate as a witness.

22. Mr. Dichter also seeks funding. He submits that as a truck driver and podcast producer, he is not able to adequately participate in the inquiry without legal representation, and that he cannot afford such representation on his own.

23. I would dismiss Mr. Dichter's application, whether as framed in his August 19th or August 29th applications.

24. As I indicated at paragraph 5 of my *Supplementary Decision on Standing*, dated July 14, 2022, there is no single criterion to use when deciding whether to accept a late application for standing. However, it is relevant to consider, amongst other things, the length of the delay, the reasons for the delay, whether the delay will cause prejudice, and an assessment of an applicant's interest, potential contribution, and how the applicant's participation may advance the Commission's mandate.

25. The delay in bringing this application is significant. The Commission gave notice to interested persons on June 1, 2022 about the process for seeking standing.

Applications were due on June 15, 2022. Mr. Dichter's application is therefore slightly more than two months late. This can be contrasted with the delay in the applications brought by the Windsor Police Service and the Union of British Columbia Indian Chiefs, which was slightly less than three weeks.

26. The reasons for the delay in bringing this application are, in some respects, not entirely satisfactory. Mr. Dichter was aware that a public inquiry had been called, though he did not, until recently, appear to have consulted the Commission's website where



information on standing applications and lists of those having been granted standing were publicly available.

27. I am, more importantly, concerned about the issue of prejudice. As I have repeatedly indicated, this Commission is labouring under significant time pressures. Commission staff have been working at an accelerated pace in order to prepare for the start of public hearings. Much has occurred behind the scenes since I issued my *Supplementary Decision on Standing*. The risk of prejudice from a late grant of standing has increased since that time.

28. This is not to say that adding a new party, even at this late stage, would present the Commission with an insurmountable obstacle. It is, however, a relevant consideration that I take into consideration in assessing this Application.

29. Perhaps the most significant consideration for me, however, is the fact that I am not convinced that Mr. Dichter has a necessary contribution to make to the Commission's work beyond being a witness. In this sense, Mr. Dichter is in a similar position as Mr. Eros.

30. Mr. Dichter's application clearly discloses that he played a role in the protests that occurred in Ottawa, and likely has information that is relevant to the Commission's mandate. It may well be that he would be an important witness at the Inquiry. In fact, Mr. Dichter's application form itself notes that he is seeking to participate as a witness.

31. It is not clear to me, however, why Mr. Dichter requires full participatory rights for the Commission to benefit from his first-hand knowledge and insight into the events in question. For example, Mr. Dichter has not explained why he would make a necessary



contribution to the Commission's process by producing policy papers or cross-examining witnesses through counsel.

32. In light of all of these considerations, I am not prepared to grant Mr. Dichter standing. It follows that I do not need to consider his request for funding.

Chris Garrah

33. Mr. Garrah's involvement in Mr. Dichter's August 29, 2022 application raises some interesting questions given that Mr. Garrah already has standing as part of the Convoy Group.

34. This unusual situation is made more complex due to certain statements made in the August 29, 2022 application. Mr. Garrah refers to recent steps that he says were taken to remove him as a director of the Convoy Corporation and provides information that – at a minimum – suggests some breakdown in communication between him and counsel representing the group with whom he shares his grant of standing.

35. The August 29th application did not include a specific request to revoke Mr. Garrah's grant of standing as it currently exists. That request was implicit, but only in the context of him being granted standing jointly with Mr. Dichter. The application did not make any submissions on what ought to happen to Mr. Garrah's grant of standing in the event that I did not grant Mr. Dichter standing.

36. I do not think that it follows from my decision with respect to Mr. Dichter that Mr. Garrah ought to lose his existing grant of standing. Nor do I believe that it follows that, having granted Mr. Garrah standing as part of the Convoy Group, I should now permit him to have individual standing. His original application for standing was inextricably linked with that of the Convoy Corporation – a legal entity that appears to have been at



the centre of the protests in Ottawa – and the other members of the Convoy Group. I therefore deny the application he has made jointly with Mr. Dichter.

37. I believe the most appropriate disposition is to leave Mr. Garrah's current status unchanged. He remains a party with standing as part of the Convoy Group. If this is, for some reason, no longer appropriate, I trust that the proper application will be brought before me.

Closing Observation

38. I note that each of the applications for standing that the Commission received arose in the course of Commission Counsel inquiring whether the Applicants would agree to be interviewed as possible witnesses.

39. All three of these individuals appear to have relevant information for the Commission to consider as part of its mandate. I do not want any of them to think that, in denying them standing, I am suggesting that their evidence is unimportant.

40. I would encourage all of them to consider Commission Counsel's request to speak with them, so that the Commission can benefit from their knowledge and insight.

Signed

The Honourable Paul S. Rouleau
Commissioner

September 9, 2022